

AMENDMENT NO. _____

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AMEND Senate Bill No. 0891

House Bill No. 0695

by deleting Section 10 in its entirety and replacing it with the following language:

SECTION 10. Tennessee Code Annotated, Title 65, Chapter 5, Part 2, is amended by adding the following new language as:

65-5-209. Rate Flexibility Plans. -- (a) On the petition of an Incumbent Local Exchange Telephone Company, the Commission may approve a rate flexibility plan for that company. Any such plan, in addition to the requirements of this Section, shall be subject to the requirements for universal service as provided in Section 65-5-207, to the requirements for interconnection as provided in Part 4 of Title 65, to the provisions of Section 65-5-208, to the provisions of this Title prohibiting unjust discrimination, undue preferences, and unjust practices by public utilities, and to the procedures, penalties, and remedies of the Commission with respect to public utilities.

(b) Rate flexibility plans shall distinguish between Basic Local Exchange Telecommunications Services and Non-Basic Services, between initial rates and subsequent rates, between services offered on the effective date of the Act and new services, shall provide for maximum rates, for minimum rates for competitive services in accordance with Section 65-5-208 and for rates for interconnection services.

(c) For the purposes of this Section:

(i) "Basic Local Exchange Telephone Services" are telecommunications services which are comprised of an access line, dial tone, touchtone and usage provided to the premises of residential customers or business

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customers for the provision of high quality, two-way switched voice transmission, within a local calling area, or other services required by state or federal statute.

(ii) "Non-Basic Services" are telecommunications services which are not defined as Basic Local Exchange Telephone Services and not exempted under the provisions of this Act.

(d) At any time after the effective date of this Act, without being dependent on the adoption of rules or on any other proceeding, any Incumbent Local Exchange Telephone Company may file a petition for the implementation of a rate flexibility plan. Such a petition shall describe with reasonable specificity the provisions of the proposed plan and shall demonstrate its consistency with the requirements of this Section. Promptly after the filing of such petition, the Commission shall commence a contested case proceeding to determine whether the plan should be approved as complying with the provisions of this Section, or modified to assure such compliance; and to determine the initial maximum rates to be charged pursuant to the plan.

(e) Since regulation is a substitute for competition, the objective in setting maximum initial rates is to approximate the maximum rates for each service which could be charged in a competitive market. Since rates for specific services set under existing rate base rate of return regulation have not been set on that basis, in effecting the transition to a rate flexibility plan, the Commission shall, first, determine whether the then existing rates of the petitioner are just and reasonable, by conducting an audit of the most

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recently filed TPSC 3.01 Report of that company. That audit shall be conducted by the Commission pursuant to its rules and generally accepted accounting procedures, but nothing herein is to be construed as a diminishment or expansion of the audit powers of the Commission for this purpose. The Commission shall, then, approve a design for rates for specific services which affords the petitioner a fair rate of return on the basis of that audit and which is also appropriate for the initial maximum rates of the petitioner, taking into account the need to balance the objective of such maximum rates and the need for an orderly transition from the existing rate design to reliance on competition.

(f) The Commission shall conduct proceedings on such a petition as expeditiously as feasible, shall utilize prehearing conferences, control and expedite discovery and other prehearing proceedings, issue and enforce scheduling orders and shall enter its final order within one hundred twenty (120) days after the filing of the petition.

(g) After initial rates are determined, subsequent maximum rates shall be subject to a maximum annual adjustment that is capped at the percentage change in inflation for the United States using the Gross Domestic Product-Price Index (GDP-PI) from the preceding year as the measure of inflation, less a productivity factor to be determined by the Commission after an evidentiary hearing. An Incumbent Local Exchange Telephone Company may adjust its rates for basic local exchange telephone service or non-basic services only so long as its aggregate revenues for basic local

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exchange telephone services or non-basic services generated by such changes do not exceed the aggregate revenues generated by the maximum rates permitted by the rate flexibility plan.

(h) Notwithstanding the annual adjustments permitted in Subsection (g), the initial basic local exchange telephone service rates for an Incumbent Local Exchange Telephone Company subject to a plan shall not increase for a period of four (4) years from the date the Incumbent Local Exchange Telephone Company becomes subject to such regulation. At the expiration of the four (4) year period, an Incumbent Local Exchange Telephone Company shall be permitted to adjust annually its rates for Basic Local Exchange Telephone Services in accordance with the methods set forth in Subsection (g) provided that in no event shall the rate for residential Basic Local Exchange Telephone Service be increased in any one year by more than the percentage change in inflation for the United States using the Gross Domestic Product-Price Index (GDP-PI) from the preceding year as the measure of inflation, less a productivity factor to be determined by the Commission after an evidentiary hearing.

(i) The maximum rates for any new Non-Basic Service first offered after the effective date of this Act shall not exceed the stand alone cost of the service.

(j) If not resolved by agreement, the Commission shall, on petition of the competing Telecommunications Service Provider, convene a contested case proceeding to establish initial rates for new interconnection services provided by an Incumbent Local

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Exchange Telephone Company subsequent to the effective date of this Act, which rates shall be set in accordance with the principles set forth in this Act. Notwithstanding any other provision of this Act, a rate flexibility plan shall permit a maximum annual adjustment in the rates for interconnection services that is capped at the percentage change in inflation for the United States using the Gross Domestic Product-Price Index (GDP-PI) from the preceding year as the measure of inflation, less a productivity factor to be determined by the Commission after an evidentiary hearing. An Incumbent Local Exchange Telephone Company may adjust its rates for interconnection services only so long as its aggregate revenues generated by such changes do not exceed the aggregate revenues generated by the maximum rates permitted by this Subsection; provided that each new rate must comply with the requirements of Section 65-5-208 and the provisions of this Title prohibiting unjust discrimination, undue preferences, and other unjust practices. Upon filing by a Competing Telecommunications Service Provider of a complaint, such rate adjustments will become subject to Commission review of the compliance of those adjustments with the provisions of this Act and rules promulgated under this Act. The Commission shall enter a final order approving, modifying or rejecting such adjustment as expeditiously as practicable. On the filing of such a complaint, the imposition of such adjustments shall be stayed pending the determination of the issues raised in that complaint.

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(k) Subsequent rates of incumbent Local Exchange Telephone Companies under a rate flexibility plan, for specific Non-Basic Services may be set by that company within the allowed maximum and minimum rates, by giving prior notice to affected customers and by filing tariff revisions with the Commission under such rules as the Commission may adopt. Any such rates must also be subject to the provisions of this Title prohibiting unjust discrimination, undue preferences and unfair practices and to the provisions of Chapter 4 of this Title concerning interconnection and the provisions of any rules adopted pursuant to Section 65-5-208.

(l) The Commission shall monitor the continued efficacy of any rate flexibility plan and, by the issuance of show cause orders or by entertaining petitions from the Incumbent Local Exchange Telephone Company assure that the plan remains consistent with the policies set forth in this section and in Section 65-5-208.

(m) Any price regulation plan for an Incumbent Local Exchange Telephone Company adopted pursuant to this Section shall terminate four (4) years after the date it is implemented. At least six (6) months prior to the date of such termination, the Commission shall convene a contested case proceeding to determine the nature and extent of regulation of the prices of that Incumbent Local Exchange Telephone Company.